

MINUTES
ENVIRONMENTAL REVIEW COMMISSION
November 9, 2011

The Environmental Review Commission (ERC or Commission) met on Wednesday November 9, 2011 at 9:00 a.m. in Room 544 of the Legislative Office Building. Representative Gillespie presided.

The following members were present: Senators David Rouzer, Co-Chair, Rep. Mitch Gillespie Co-Chair, Senator Stan Bingham, Senator Dan Clodfelter, Senator Don East, Senator Fletcher Hartsell, Senator Brent Jackson, Representative William Brisson, Representative Joe Hackney, Representative Carolyn Justice, Representative Pat McElraft, and Representative Chuck McGrady. Also present were: Mr. Jeff Hudson, Ms. Jennifer McGinnis, Commission Counsels; Ms. Jennifer Mundt, Commission Analyst; Ms. Mariah Matheson, Research Assistant; Ms. Cindy Hobbs, Commission Clerk; and Sergeants-at-Arms Bill Bass, Fred Hines, Bob Rossi, and John Fitchett. Attachments #1 and #2.

On October 31, 2011, notice was sent to members and interested parties via e-mail. A copy of the notice is included in the attachments to these minutes as Attachment #3. Copies of the agenda for the meeting and visitor registration sheets are included in the attachments to these minutes as Attachment #4 and Attachment #5, respectively.

Call to order and introductory remarks

Representative Gillespie called the meeting to order and welcomed members, staff, and visitors in attendance. He recognized his Co-Chair, Senator Rouzer for introductory remarks. Senator Rouzer welcomed members, staff, and visitors in attendance. Representative Gillespie called for the approval of the minutes for the September 28, 2011 meeting, Attachment #6. There being no changes, Representative McGrady moved for approval. The commission received a disposition of reports submitted by Mariah Matheson, Attachment #7. Representative Gillespie then recognized Richard Whisnant, Associate Professor of Public Law and Government School of Government, University of North Carolina at Chapel Hill and William E. Holman, Director of State Policy, Nicholas Institute of Environmental Policy Solutions, Duke University to make their presentation.

Presentation on State water resources and water law

Messrs. Whisnant and Holman presented the state of the water resources and water law in the State. A copy of Messrs.' Whisnant and Holman's PowerPoint presentation is included in the attachments to these minutes as Attachment #8. Key recommendations from the presentation were:

1. Continue to develop and update hydrologic models of each river basin (per S.L. 2010-143).

2. Request reports on the Upper Neuse and Catawba-Wateree River Basins regarding future water shortages.
3. Integrate water quality and water quantity planning starting with Neuse River Plan in 2012 and Cape Fear River in 2013.
4. Not favoring one set of users over another until a better understanding of the “water budget” picture is clarified.
5. Work on design for multi-stakeholder process.
6. Preserve and increase water storage.
7. Support increased financial sustainability of public and private water utilities.
8. Increase water efficiency.

Messrs.' Whisnant and Holman received a number of questions and requests for further information including:

Representative Gillespie asked for additional information regarding acquiring water from Kerr Lake, a copy of Dr. Moreau's report, and asked about research on water desalination by Research Triangle Institute (RTI).

Representatives Hackney and Gillespie asked for the existing survey of abandoned quarries and that Commission staff follow up with the Division of Land Resources in the Department of Environment and Natural Resources (DENR) concerning the quarries.

Presentation on the permitting of drinking water reservoirs in North Carolina

Representative Gillespie recognized Tom Reeder, Director of the Division of Water Resources, DENR. A copy of Mr. Reeder's PowerPoint presentation is included in the attachments to these minutes as Attachment # 9. Mr. Reeder explained the differences between Clean Water Act Section 404 (federal) and Section 401 (State) permits. Mr. Reeder addressed the permitting process and associated timelines. Mr. Reeder also reviewed potential issues that would significantly extend the permit review process including: alternative and site selection; threatened and endangered species; interbasin transfer certificates; fish passage and migratory species; water supply/quality reclassification, and applicant decisions on study funding.

Mr. Reeder also presented and discussed a list of the reservoirs developed over the past 20 years. This list is included in the attachments to these minutes as Attachment #10.

DENR Assistant Secretary Robin Smith provided a historical account of the permitting process for Randleman Reservoir from the original proposal made in 1937 through the beginning of the dam's construction in 2001. Ms. Smith's History of Randleman Reservoir is included in the attachments to these minutes as Attachment # 11.

Mr. Reeder and Ms. Smith received a number of questions and requests for further information including:

Senator Clodfelter who had a question for Mr. Reeder about the Lancaster/Union project. Senator Clodfelter wanted to know if it was issued a general or an individual permit.

Representative Hackney asked whether local authorities can require efficiency standards (e.g., low-flow toilets, water saving inserts in faucets) vis-a-vis building code requirements.

Representative McElraft noted that lands were taken by eminent domain in 1991 for Randleman Dam and that there was a lag time between the "taking" and when the construction of the dam began in 2001. Representative McElraft wanted to know when the property owners had to move.

Representatives Gillespie and McGrady both indicated that there is a need to revisit House Bill 609 (perhaps in a 2012 Amend Environmental Laws Bill) to address the Department's liability when providing the assistance and cooperation to local governments that is required pursuant to the bill.

Report on the States 2011 Agricultural Water Use Survey

Representative Gillespie introduced Herb Vanderberry, Director, United States Department of Agriculture, National Agricultural Statistics Service North Carolina Field Office. Mr. Vanderberry reported that compared to withdrawals from all users, agricultural water use was less than 1% of all water withdrawals in 2010. Information for agricultural water use is available only for those 15 counties in the Central Coastal Plain Capacity Use Area (CCPCUA) and for water withdrawals of greater than 1 million gallons per day outside the CCPCUA. Attachments # 12, #13, #14, and #15.

Report on the transfer of the Division of Soil and Water Conservation, the Division of Forestry, the Sleep Products program and the Grade A Milk Inspection Program to the Department of Agriculture and Consumer Services

Representative Gillespie introduced David Smith, Chief Deputy Commissioner, Department of Agriculture and Consumer Services (DACS). Mr. Smith reported that the transfer of the divisions and programs to DACS was the largest transfer of assets and employees in the history of the State. A smooth transition was made within the first quarter of the fiscal year with no disruption of services. Representative Gillespie praised the Department and requested that Mr. Smith submit a list of statutory changes required to clarify or amend the transfers to DACS. Senator Jackson inquired about developing a handbook for the transfer of divisions and departments. Mr. Smith replied that the Office of State Budget and Management is working on guidelines for future transfers.

Annual report on the status of leaking petroleum underground storage tanks and the State cleanup (G.S. 143-215.94M)

Representative Gillespie introduced Dexter Matthews, Director of the Division of Waste management, DENR. Mr. Matthews discussed the status of the underground storage tank (UST) program, the status of funds available to businesses and homeowners, and recommendations for the future. Mr. Matthews received a number of questions and requests for further information including:

Representative McElraft asked about the status and number of third-party claims and the claim amounts.

Senator East requested a copy of the Program Evaluation Division's UST report and any past bills on USTs.

Representative Brisson requested follow up on his concern about a particular commercial site previously mentioned to the Department. Attachment # 16.

Representative Gillespie requested that a letter from the Division of Waste Management be sent to the commission requesting funding for the program.

There being no further business, the meeting was adjourned at 12:25 PM.

Co-Chair Senator David Rouzer
Gillespie

Co-Chair Representative Mitch

Co-Chair Representative Ruth Samuelson

Attest:

Cindy Hobbs, Commission Clerk